



April 2, 2001

Ms. Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

OR2001-1306

Dear Ms. Stiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145544.

The Texas Department of Housing and Community Affairs (the "TDHCA") received a request for the following documents:

- A. Copies of all Tenant Income Certifications submitted to the Texas Department of Housing and Community Affairs in the matter of Williams Run 501(c)(3) tax-exempt bond;
- B. Copies of any other documents which identify or tend to identify any residents of Williams Run for the purpose of qualifying Green Bridge Development Corporation for the Williams Run 501(c)(3) tax-exempt bond issue, including any sworn affidavits, sworn documents, tax records, pay stubs or any other supporting documents such as Tenant Income Certifications in the care and control of the Texas Department of Housing and Community Affairs;
- C. In the event documents described in Section A and B are considered privileged information, please allow examination and copying of any and all documents relating to or mentioning Harold Barker or Edward L. Barker. Signatures below constitute release of these documents to the designated third party agent described below.

D. Copies of each and every document in the possession of the Texas Department of Housing and Community Affairs relating to the Williams Run 501(c)(3) tax-exempt bond issue; and

E. Copies of each and every travel expense voucher, expense bill, plane ticket, travel expense, vehicle expense, per diem voucher or bill, food expense, or any other incidental expense of any Texas Department of Housing and Community Affairs employee who traveled to Dallas for any purpose relating to the Williams Run bond, to include any employee sent to inspect, evaluate, or analyze the Williams Run project.

You assert, contrary to the requestor's prior complaints, that the requestor has received over 2,000 pages of information representing all of the documents in the possession of the TDHCA, and that with the exception of a few redacted copies, no documents were withheld. Additionally, you claim that you are not in possession of Tenant Income Certifications as "TDHCA usually does not even receive that kind of detailed tenant information." We note that the Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App. -- San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Although you do not specify a particular exception within the Act, you contend the marked information is exempt from public disclosure under section 2306.039 of the Government Code. We have considered the exception you claim and reviewed the submitted sample.¹

Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

In this case, this office did not receive the request for a decision within the 10 business day period mandated by section 552.301(a). The TDHCA received the open records request on November 2, 2000. The TDHCA's request for an attorney general's decision was received on January 26, 2001. Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App. – Austin 1990, no writ).

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. – Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). The presumption of openness can be overcome by a compelling demonstration that the information is made confidential by another source of law or affects third party interests. Open Records Decision No. 150 (1977). You argue the responsive information is confidential under section 2306.039 of the Government Code.

Section 2306.039 states:

(a) Except as provided by Subsection (b), the department and the Texas State Affordable Housing Corporation are subject to Chapters 551 and 552.

(b) This section does not apply to the personal financial information submitted by an individual or family for a loan, grant, or other housing assistance under a program administered by the department or the Texas State Affordable Housing Corporation or from bonds issued by the department, except that the department and the corporation are permitted to disclose information about any applicant in a form that does not reveal the identity of the individual or family for purposes of determining eligibility for programs and in preparing reports required under this chapter.

Gov't Code § 2306.039. Section 552.101 of the Government Code, which excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision, encompasses section 2306.039. In this instance, you argue the requested information is confidential under section 2306.039 of the Government Code. We agree. After a review of the submitted information, it appears the information constitutes "personal financial information submitted by an individual or family for a loan, grant, or other housing assistance under a program administered by the [TDHCA] . . . or from bonds issued by the [TDHCA]." *See* Gov't Code § 2306.039(b). Therefore, this information is not subject to the Act. Gov't Code § 2306.039(a), (b). Subsection (b) permits the TDHCA to release information after redacting the applicants' names. However, release of the information under the Act is not a release for the purposes of determining eligibility for programs or in preparing reports under chapter 2306 of the Government Code. Thus, you

must withhold the highlighted information pursuant to section 552.101 in conjunction with section 2306.039 of the Government Code.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

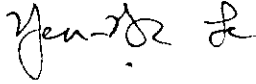
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

² We note that several documents are unresponsive to the original request but have been submitted to this office as "background" information. Consequently, we do not rule on any portion of these documents.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Yen-Ha Le".

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref: ID# 145544

Encl. Submitted documents

cc: Mr. Harold Barker
7440 La Vista Drive #253
Dallas, Texas 75214
(w/o enclosures)